THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 7964 OF 1994

Between:

Dr.P.Chandrasekhar Reddy … Petitioner

And

1. Sri Venkateswara University
Tirupati rep. By its Registrar
And 6 others …. Respondent

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 7964 OF 1994

ORDER:

Seeking a Writ of Mandamus to declare the action of the 1st respondent – University in appointing respondents 2 to 6 as Lecturers in Chemistry, on the basis of the selection held pursuant to the advertisements dated 1.2.1992 and 28.2.1992, as arbitrary and illegal and for a consequential direction to the 1st respondent to consider the petitioner's candidature for appointment to the post of Lecturer in Chemistry on the basis of his merit, the present writ petition is filed.

Facts, in brief, are that the petitioner, a Ph.D in "Radio Analytical Chemistry", having secured First Class in M.Sc. with 69% marks, sought appointment to the post of Lecturer in Chemistry pursuant to the notification issued by the 1st respondent on 1.2.1992 and 28.2.1992. According to the petitioner, various faculties and departments of the university were clubbed together into three separate groups, and Chemistry was brought under Group II, while making recruitment for appointment to various posts. Petitioner would submit that, while the first advertisement dated 1.2.1992 specified one permanent post and two temporary posts of Lecturers in Chemistry in the S.V.U. College of Arts & Sciences, Tirupati, the second advertisement dated 28.02.1992

specified one temporary post of lecturer in Chemistry in the S.V.U. College of Engineering, Tirupati. Thus four posts of lecturers in chemistry were advertised under these two notifications. The petitioner, having applied pursuant to these notifications, appeared for the interview held on 7.8.1992. He was, however, not selected and instead respondents 2 to 6 were selected and appointed as Lecturers in Chemistry. According to the petitioner his qualification, experience and academic record was far better than any of the selected candidates. Petitioner would state that the selections made, pursuant to the notifications dated 1.2.1992 and 28.2.1992, was a major scandal highlighted in the press and the electronic media and that several allegations were made of nepotism and extraneous considerations having played a predominant role in the selection process superceding merit. Petitioner would contend that his candidature, for appointment as a Lecturer, should not have been overlooked and respondents 2 to 6 ought not to have been appointed overlooking him, since he was far higher in merit when compared to Respondents 2 to 6. Petitioner would state that none of the posts of Lecturers in Chemistry were specifically earmarked for the reserved category nor did the notification specify that reservation would be applicable to the advertised posts subject-wise. The notification merely stated that overall reservation was applicable to each group. Petitioner would submit that such prescription of reservation was in violation of the settled norms that reservation should be provided subject wise, that the 1st respondent – university had selected respondents 2 to 6, all of whom belonged to the open category, though there was not even a single Scheduled Caste or Scheduled Tribe Lecturer in the entire department of Chemistry

consisting of 24 lecturers. Petitioner would contend that the practice adopted by the university, of keeping applicants in dark about the posts which were reserved, also provided a leeway for arbitrary exercise of discretion and enabled the university to subsequently provide for reservation to certain earmarked posts according to its whims and fancies. Petitioner would state that, while the advertised posts of Lecturers in Chemistry were four in number, (one permanent and three temporary), the 1st respondent University had appointed five lectures, i.e., respondents 2 to 6, that respondent No.2 was appointed in the permanent vacancy in the S.V.U. College of Arts and Sciences though he possessed specialization in Mineral Chemistry which was not amongst the courses offered by the Chemistry Department, that respondents 3, 5 and 6 were appointed to the temporary posts of lecturers in the S.V.U. College of Engineering, Tirupati and that the 4th respondent was appointed ostensibly in the consequential vacancy which arose in the S.V.U. College of Engineering due to the promotion of a Reader, (under the Merit Promotion Scheme), as a Professor. According to the petitioner, though the said post was not even notified, yet the 4th respondent was appointed in the said post on a temporary basis. Petitioner would contend that the practice of making temporary appointments to consequential vacancies, without notifying them, was amongst the irregularities highlighted in the media. Petitioner would seek to compare his credentials with that of respondents 2 to 6 and submit that he was more meritorious and suitable to be appointed. According to the petitioner he had more post-doctoral research experience, more number of research publications to his credit as compared to

respondents 2 to 6 and that respondents 2, 3 and 5 were rejected for the award of research associateship by the C.S.I.R, New Delhi, whereas the petitioner was selected. Petitioner would submit that, in the absence of prescription of clear-cut guidelines and laying down a rational criteria for selection, wide latitude was given to the selection committee thereby facilitating them to appoint candidates of their choice. In so far as the 6th respondent is concerned, petitioner would contend that he is closely related to the Registrar of the University and that was the paramount consideration for his selection and appointment to the post of Lecturer in Chemistry. Petitioner would submit that, when the selections came up for ratification before the Board of Management, the board members had raised objections to the 6th respondent being placed at serial No.3 in the select list contending that at least 3 posts should have been earmarked in favour of candidates belonging to the backward classes. According to the petitioner, while one post was allotted to the B.C. category, the said post was again re-allotted one month thereafter to the 6th respondent and that the influence of the Registrar in this exercise was patent and obvious. Petitioner would contend that his outspokenness had resulted in his being victimized in the form of withholding his research associateship, stipend, physical threats etc., and his grievance in this regard before the District Consumer Forum resulted in the 1st respondent being directed to pay all the amounts due to him along with damages of Rs.3000/-. Petitioner would refer to the fact that, the respondent – university had admitted before the consumer forum that the petitioner was a brilliant scholar despite which his achievements were ignored by the selection committee. According

to the petitioner, the matter was inquired into by the Lok Ayuktha and the respondent-University was asked to substantiate its stand. Petitioner would state that the Minister for Higher Education, had made a promise to the State Legislature that all the appointments made by the 1st respondent would be kept in abeyance, that a full-fledged enquiry would be conducted into the irregularities committed by the 1st respondent university and these statements had made the petitioner believe that the injustice caused to him would be redressed without necessitating his seeking the intervention of this Court. According to the petitioner since there was no progress in the investigation, he was left with no other alternative but to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

The then Registrar of the University, in his counter affidavit, would submit that the petitioner, having applied for the post of lecturer in Chemistry, and having appeared for the interview before the selection committee, was neither entitled to challenge the notifications nor question the constitution of the Selection Committee and the recommendations made by it. It is stated that, since the petitioner belongs to the open category, he has no locus standi to ventilate the grievances of candidates belonging to the reserved category and that he was not entitled to challenge the validity of the notifications dated 1.2.1992, and 28.2.1992, on the ground that posts were not reserved department-wise in both the notifications. According to the 1st respondent, no loss was thereby caused to the petitioner as he was not entitled for the benefits of reservation. Respondent would contend that they had followed the rule of reservation while making appointments.

According to the respondents it was not open to the petitioner to indulge in an exercise of self-assessment and since the Selection Committee, on a comparative assessment of the merits of all the candidates, had submitted recommendations in favour of respondents 2 to 6, such recommendations did not call for interference. It is stated that, in order to comply with the rule of reservation, various faculties in the university were divided into three groups in accordance with G.O.Ms.No.995 dated 16.12.1982. The Arts faculty in Group I, Science faculty in Group II and Engineering faculty in Group III and, while it may be true that there were no teachers belonging to the reserved category in the Chemistry Department of the University, it was not open to the petitioner to make a grievance in this regard, simply because respondents 2 to 6 belong to the open category, when he himself belonged to the open category and was not entitled for the benefits of reservation. Respondents would deny the allegations that such grouping of posts, for the purpose of reservation, was to favour certain candidates for extraneous, political or monetary, considerations. According to the 1st respondent, respondents 2 to 6 possessed the essential qualifications and were eligible to apply for the post of Lecturer in Chemistry and, since the petitioner and respondents 2 to 6 all belong to the open category, it was not open for him to make a grievance in this regard. According to the respondent, in the year 1981, one S.C. candidate by name S.E. Chakravarthy was appointed as a Chemistry Lecturer and was posted at the P.G. Centre in Kurnool. Respondents would submit that selection of five candidates, against the four posts notified, was justified as filling up of posts is a time consuming process, commencing with a notification being issued, a panel of outside

experts being prepared by the Board of Studies and approved by the Board of Management, experts being nominated by the Vice-Chancellor for conducting interviews, and only thereafter are appointments to be made by the Board of Management. It is stated that, in order to meet academic necessities, keeping in mind the paramount interest of the student community, the 1st respondent could not be faulted for filling up consequential vacancies, that too temporarily, from out of the candidates recommended by the Selection Committee. According to the respondents, opening of a service register and mentioning the names of temporary appointees in the calendar was not illegal. Respondents would deny that the selections were made without following the guidelines and submit that the Selection Committee had made an objective assessment and had awarded marks under various heads. Respondents would also deny the allegations that the Selection Committee did not apply its mind while making recommendations or that the paramount reason for appointing the 6th respondent was his relationship with the Registrar. According to the respondents, the mere fact that Respondent No.6 was related to the Registrar was not a disqualification for his applying for the post of lecturer in Chemistry. Respondents would deny that the members of Board of Management had raised objections on 1.9.1992 at the time when the resolution was passed appointing the 6th respondent as lecturer in chemistry. The 1st respondent would also deny that the 3rd vacancy in the posts of Chemistry Lecturers was reserved for the backward classes or that it was re-allotted later to the 6th respondent. The allegations, of acting vindictively against the petitioner, are also denied. While admitting

that the 2nd respondent has specialized in Mineral Chemistry, the 1st respondent would submit that he was not ineligible for appointment to the post of lecturer in chemistry, that no particular specialization was mentioned in the notification and that, merely because a course in Mineral Chemistry was not offered in the department, it could not be said that the 2nd respondent was not eligible to apply for the post of lecturer in Chemistry.

The 2nd respondent, in his counter-affidavit, would submit that all the five selected candidates possessed doctorate degrees, that they were fully qualified for appointment to the post of Lecturer and that the University, after considering the relative merits of all the candidates who had participated in the selection process, had appointed them as Lecturers. According to the 2nd respondent, the very filing of the writ petition by the petitioner herein was only to harass the selected candidates. It is stated that, since the petitioner belongs to the open category, he was not entitled to question the action of the university in not providing post-wise reservation and, since he had applied and had appeared for the interview, he must be deemed to have waived his right to question the validity of the notification and the recommendations of the selection committee. The 2nd respondent would submit that, since the qualification prescribed in the notification is 55% marks in the post-graduate course in Chemistry with Ph.D and since he possessed the prescribed qualifications, the mere fact that he had specialized in mineral chemistry was of no consequence. As the other averments in the counter affidavit filed by the 1st respondent are reiterated by the second respondent in his counter affidavit, such of those averments do not bear repetition.

Respondents 3 to 6, in their counter affidavit, state that all of them are doctorates and are fully qualified to be appointed as lecturers in chemistry, that ever since their appointment they continue to work as lecturers and have, in fact, been promoted to higher posts in the 1st respondent – University. They would submit that, since the petitioner had participated in the selection process and the selection committee, on a comparative assessment of the relative merits of all the candidates, had recommended the candidature of respondents 2 to 6, there was no illegality in the selection process. It is stated that the 1st respondent – university had issued two advertisements, the first for the post of Lecturer in the Department of Chemistry in the S.V.U College of Arts and Sciences where there were one permanent post and two temporary posts, and the second for one post in the evening college of the S.V.U. College of Engineering, that respondents 2 to 6 had applied pursuant to both the notifications, that in the three posts in S.V.U. College of Arts and Sciences respondents 2, 3 and 6 were selected and the 5th respondent kept in the waiting list, and that the 4th respondent was selected for the post of lecturer in the evening college of the S.V.U. College of Engineering. They would submit that since filling up of posts involved a time consuming process, a waiting list was prepared and the 4th respondent, who was appointed in the evening college, was shifted to the post vacated by Prof. C. Devendranth Reddy and in his place the 5th respondent was appointed as a lecturer. It is stated that the appointment order of the 5th respondent was issued in the month of October, 1992 and that there was no delay. Reference is also made to the fact that under the notification, the uUniversity had

reserved to itself the right to increase/decrease the number of posts, to fill or not to fill any or all the posts, to relax the qualifications when candidates with the prescribed qualifications were not available or were not found suitable and to appoint candidates to posts lower than the one they had applied for. Respondents would contend that, since the university had the right to increase the number of posts, it was open for them to fill up the consequential vacancies from out of the candidates recommended earlier by the selection committee and who were kept in the waiting list. It is stated that the selection committee had made an objective assessment and had awarded marks and that it was not open to the petitioner to find fault with the said process. Respondents would submit that the marks which they had secured was higher than the marks which the selection committee had awarded to the petitioner. With regards the failure to comply with the rule of reservation, the averments in the counter affidavit filed on behalf of the 1st and 2nd respondents are reiterated. It is further submitted that the Full Bench of this Court in **P.V.S.V.Prasada Rao v. Andhra University**[1] had upheld the said categorization. It is stated that the selection committee consists of the Vice Chancellor, three experts from outside the University to be nominated by the Vice-Chancellor, the Chairman of the Board of Studies and the Head of the Department and that the Registrar of the University is not a member of the selection committee and is merely its secretary. It is stated that the Registrar has no role to play in the selection process and that the Registrar was distantly related to the 6th respondent. The 6th respondent would state that the wife of the Registrar of the 1st

respondent – University is distantly related to his wife and that he does not fall within the 46 prohibited categories of "Near relatives" published by the University. According to the Sixth respondent, since the notification itself mentions that the number of posts advertised may vary and, as within two months of completion of the selection process, appointment orders were issued to all the candidates and the fifth respondent who was at Sl.No.1 in the waiting list was appointed in October, 1992 itself, it was not as if the waitlist was operated upon after a long lapse of time. Respondents would further contend that, while the 1992 selection process was the subject matter of litigation, the selections were eventually upheld. It is contended that since the petitioner had applied for the post of Lecturer, being well aware of the contents of the notification, it was not open to him to turn around and question the notification itself or the selection of respondents 2 to 6 merely because he was not selected.

Sri P.V.Sanjay Kumar, learned counsel for the petitioner, would contend that both the notifications issued by the respondent – University, and the selection of respondent 2 to 6 as Lecturers in Chemistry, were liable to be quashed on the following grounds.

(1) As against the four posts of Lecturers in chemistry, as specified in the notifications dated 1.2.1992 and 28.2.1992, five candidates (respondents 2 to 6) were selected and appointed;

(2) No guidelines were prescribed for the selection committee to make a comparative assessment of the respective merits of the candidates and the entire selection process was

a farcical exercise since the university had decided, even prior to commencement of the selection process, to appoint respondents 2 to 6 as Lecturers in Chemistry.

(3) Despite the fact that the teaching faculty of the Department of Chemistry, either in the S.V.U College of Arts and Science or in the S.V.U. College of Engineering, did not have even a single lecturer from the reserved category, the 1st respondent – University, giving a go bye to the rule of reservation, had appointed respondents 2 to 6, all of whom were candidates from the open category

(4) Instead of providing reservation department-wise/postwise posts in several department of the University were grouped together, and reservation was provided group-wise, giving a wide discretion to the university authorities to pick and choose the department in which reservation may be provided.

Learned counsel would place reliance on the judgment of the Full bench of this court **P.V.S.V.Prasada Rao**[1], and submit that, while the petitioner had filed W.P.8435/94 challenging the entire selection process undertaken pursuant to the notification, the said Writ Petition was more in the nature of a public interest litigation and, the mere fact that the said Writ Petition was dismissed, would

not have any bearing on the present writ petition where the petitioner is directly aggrieved by his non-selection.

Sri P.Sriramulu Naidu, learned Standing Counsel for the respondent- university placed before this Court, the record of the proceedings of the Selection Committee wherein marks were allotted separately for qualifications, publications, research and teaching, lecture presentation and performance. Marks which were given, under each of these heads, to the petitioner and respondents 2 to 6 reads as under:

Name of the candidate	Caste	Qualifi-Cations 15	Publi-cations Research & Teaching 10	Lecture presen-tation 10	Perfor-mance 15	Total 50
Chandrasekhar Reddy.P	OC	13	5	1	3	22
Yungandhar Sreedhar.N	OC	15	5	6	14	40
Venkatasubbba Naidu. N	OC	13	4	8	12	37
Padmavathi.V	OC	13	5	8	11	37
Suresh Reddy.C	OC	13	5	3	10	31
Varada Reddy.A	OC	13	8	4	8	33

While the scope of judicial review, in academic matters, is no doubt limited and Courts, normally, defer to the wisdom of expert academicians in such matters involving determination of academic excellence and in appointment made to the teaching faculty in institutions of higher learning, this should, however, not

be construed as conferring an unbridled power on the university authorities to resort to an arbitrary exercise of selection or to violate the rule of reservation.

The first contention which requires examination is as to whether failure to prescribe guidelines for the selection committee, to asses the relative merits of each of the candidates who had participated in the selection process, vitiates the selection process. While it is not in dispute that the University had not chosen to lay down parameters, or standards, for the selection committee to follow, in selecting candidates as lecturers for various departments, the records placed before this court would show that the selection committee had evolved its own procedure and had classified the parameters for selection of candidates made under four different heads viz., (1) Qualifications; (2) Publications, Research and Teaching; (3) Lecture presentation; and (4) Performance. Candidates, who were called upon to participate in the selection process, were allotted marks under each of these heads. While the petitioner was awarded a total of 22 marks, respondents 2 to 6 secured far higher marks in the range of 31 to 40.

Sri P.V.Sanjay Kumar, learned counsel for the petitioner, would contend that by allotting 10 marks to Lecture Presentation and 15 marks for Performance and, without prescribing any

rational criteria to determine as to how the performance of a candidate is to be judged, the selection committee had conferred on itself the unbridled power to pick and choose candidates of its choice. Learned counsel would submit that, while the petitioner had secured 18 marks out of 25 towards Qualification and Publications, Research and Teaching, which was equal to the marks secured by respondents 4 and 5, he had been given far lesser marks towards Lecture Presentation and Performance for determination of which no rational criteria was prescribed. While prescription of well-defined parameters for assessing a candidate's performance is no doubt desirable, and would have ensured transparency in the selection process and prevented allegations of arbitrariness, keeping in mind the settled legal position, as laid down in a catena of decisions of the Apex Court, that this Court under Article 226 of the Constitution of India would not sit in appeal over the recommendations made by the selection committee or take upon itself the task of making a comparative assessment of the relative merits of each of the candidates who had undergone the process of selection, I refrain from dwelling further on this aspect. While the contention of the respondents, that the notification does not require specialization in any particular branch in Chemistry for being appointed as a lecturer is no doubt true, it is also not in dispute that the Post Graduation and

Ph.D. Degree obtained by the second respondent is in Mineral Chemistry which was not among the courses offered by the University. It is instances, such as these, which give rise to the clamour that a rethink is necessary on the exercise of self-restraint by superior Courts, in invoking its powers of judicial review, in matters of selection in institutions of higher learning and gives rise to the criticism that needless deference to the wisdom of academic bodies has also contributed, in no small measure, to the diminishing of the standards of excellence required to be maintained in making appointments to the teaching faculty in these academic institutions.

Sri P.Sree Ramulu Naidu, learned standing counsel for the respondent-University, would point out that the 6th respondent was not in the prohibited category of relationship with the then Registrar so as to disentitle him from being considered for selection and that, in any event, the Registrar of the University did not participate in the selection process and, therefore, selection of the 6th respondent cannot be faulted on this ground. Learned standing counsel would submit that the 6th respondent had secured far higher marks than the petitioner and since he was the 4th most meritorious, amongst the candidates who had participated in the selection process, he was appointed to one of the four posts for which notifications were issued. Since the 6th respondent is

distantly related, that too by marriage, to the then Registrar, I do not see any reason to interfere with his selection, more so since the Registrar had not even participated in the selection process.

Though five candidates were appointed, as against the four posts notified, Sri P.Sree Ramulu Naidu, learned Standing Counsel would submit that the University had, under the notification, reserved to itself the right to fill up any consequential vacancies that may arise. Learned standing counsel would submit that, shortly after appointment of the four candidates, a vacancy in the post of a lecturer in Chemistry in the Sri Venkateswara University College of Engineering had arisen, consequent upon the promotion of Sri C. Devendranath Reddy, erstwhile Reader, as a Professor. Learned Standing Counsel would submit that instead of going through the arduous exercise of issuing a notification afresh, constituting a selection committee, inviting experts from outside the University and conducting fresh selections, the respondent-University had reserved to itself the power to make appointments to consequential vacancies under the notification itself and it was, in exercise of such powers, that the fifth respondent was appointed as a Lecturer in Chemistry. Though Sri P.V.Sanjay Kumar, learned counsel for the petitioner, would contend otherwise and submit that the University must be required to fill up only such posts which were actually notified, I do not propose to examine

this question any further inasmuch as the petitioner had participated in the selection process under the very same notification. Having participated in the process of selection it is not open to the petitioner to turn around and question the very notification, under which his candidature for appointment as a Lecturer in Chemistry was considered, merely because he was not selected.

The Full Bench of this Court in **P.V.S.V.PRASADA RAO**[1] had faulted the Andhra University in grouping several departments together for the purpose of providing reservation.

"..... It is thus apparent that Chandrayudu and STAC are the decisions of two Division Benches of this court taking the views and clearly enunciating the principle and ratio that the notification by a University inviting applications for filling up of posts in several categories, posts, faculties and disciplines, should clearly spelt out, identify and specify the particular posts in each category and subject to which reservations in favour of SCs, STs and OBCS is applied. Failure to so specify the reserved category and subject, would invalidate the selection process. ....."

"....In our considered view, in the constitutional context the guarantee of equality before the law and equal opportunity under the laws, including in matters of public employment mandates that all persons qualified, in accordance with rationally prescribed standards of qualification, should have an equal opportunity to compete for public employment and to posts of their choice in public employment. This right should be balanced with the equally legitimate constitutionally permitted scheme of affirmative action and subject to the limitations of the extent to which reservations could be made, the limits having been reiterated in Indra Sawhney and others v Union of India and others (1992 SUPP III SCC 217). Clubbing of posts or faculties, unit or category wise is but a procedural aspect. The procedure adopted by a public authority while structuring recruitment to public employment opportunities must confirm to the constitutional goal of equal opportunity, mandated in Articles 15 and 16 of the Constitution of India. This requires a delicate balancing of the guaranteed constitutional right of equality with the equally value-pregnant constitutional principles that permit affirmative action. There cannot be a universal constitutional principle that clubbing of posts is valid (or otherwise). The nature of the clubbing, the consequences of clubbing and whether as a result of clubbing equal opportunity is denied to qualified candidates to

compete to posts of their choice (subject however to the need for affirmative action) must all be considered while determining whether clubbing of posts and faculties is constitutionally sound. Where the clubbing of posts or faculties for instance results in denial of equal opportunity to a qualified candidate to compete for a post of his choice or if posts in a particular discipline are year after year enveloped only for accommodating reserved categories or for open categories there would be denial of equal opportunity either for the open category candidates or reserved category candidates, as the case may be. in such a situation the procedure of clubbing requires relevant scrutiny on constitutional standards. ……"

"……The learned counsel for the University has placed reliance on a recent judgment of the Supreme Court in **Ashok Kumar Pandey v. State of West Bengal** (supra) in support of his plea to reject the PIL writ petition. It was a writ petition filed in public interest seeking a mandamus to convert death sentence imposed on one Dhanunjay Chatterjee to life imprisonment because the death sentence was not carried out for a long time. A two Judge Bench of the Supreme Court while dismissing the writ petition made the following observations.

> *Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in* ***Duryodhan Sahu (Dr) v. Jitendra Kumar Mishra*** (1998) 7 SCC 273 = AIR 1999 SC 114 (paras 18 & 21) *this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforestated so that the message goes in the right direction that*

petitions filed with oblique motive do not have the approval of the courts……."

"……On an analysis of cited precedents as above, the following broad principles would emerge:

a) In the absence of any indication in the binding Rules or statutes, it is open to the University to treat all teaching posts as belonging to one class for application of Rule of Reservation.

b) While evolving the method of grouping various faculties for the purpose of providing reservation, University must ensure that equal opportunity for selection and appointment is available to all candidates in all faculties, discipline and/or specialty in such a manner that no one category gains monopoly in getting reserved posts.

c) If the method adopted by the University in classifying posts into a group/groups, or class/classes, is reasonable, the same does not suffer from the vice of illegality or unconstitutionality.

d) While laying a method for providing Rule of Reservation, the University must ensure fairness and transparency in the recruitment process at the stage of issuing notification-inviting applications, conducting selections and at the stage of recruitment.

e) If there is any binding statute or rule requiring the University to follow the method of roster, it should be strictly adhered to at the stage of recruitment notification as well as recruitment.

f) If reservation is effected with reference to statutory roster, there is lesser likelihood of injustice because the aspiring candidates would know whether there is a post or posts in the department/faculty/group in which such candidate desires to compete for the post, and

g) While giving the notification University should indicate to which of the posts and in which of the department/faculty reservation is provided. This has effect on the entire recruitment in the given recruitment year with reference to the roster. ……"

"……This method adopted by the University is certainly goes against the principles laid down in **University of Cochin v. Dr.N.Raman Nair** (supra) as well as **Suresh Chandra Verma v. Chancellor, Nagpur University** (supra). This method would certainly results in anomalies or incongruities pointed out by the Supreme Court in **Suresh Chandra Verma v.**

Chancellor, Nagpur University (supra). Neither the candidates nor the selection committees were aware of the reservations with reference to the particular subject in each group. This would certainly gives a larger scope for a Vice Chancellor who has a pivotal role at every stage of selections to manipulate the vacancy position at the time of appointments. For instance, depending on the whims and fancies, the Vice Chancellor may order a particular SC vacancy to be filled up in a particular department though in comparison with other departments, the backlog of SC vacancies in another department may be more or the need may be more felt. This method would certainly deprive a qualified candidate of appointment in that subject from which the reserved vacancy was shifted to other department by the authorities. The procedure adopted by the University in not determining the subjectwise reservation posts at pre-notification stage and not advertising the posts subjectwise would certainly negates equal opportunity to all the aspiring candidates. The procedure certainly lacks transparency and whenever there is lack of transparency in discharge of public functions, the exercise by public authorities would be arbitrary and capricious. What do we mean by transparency in public administration or constitutional governance? ……"

There is considerable force in the submission of Sri P.V.Sanjay Kumar, learned counsel for the petitioner, that such grouping of several departments, for the purpose of providing reservation, would confer unfettered discretion on the authorities concerned to pick and choose the department in which reservation may be provided. It is not in dispute that the Department of Chemistry, which at the relevant time had 24 lecturers/Readers/Professors, as its teaching faculty, did not have a single individual, from the reserved category, despite which, under the cover of grouping of departments, five candidates from the open category were selected for appointment as Lecturers in Chemistry ignoring the genuine claims of candidates from the reserved category for being appointed to such posts. The

constitutional protection, guaranteed to the members of the Scheduled Castes and the Scheduled Tribes, would necessitate adequate safeguards being provided for ensuring effective implementation of the rule of reservation. It needs no emphasis that these constitutional guarantees, intended to ameliorate the plight and suffering of the Scheduled Castes, and the Scheduled Tribes, must not be rendered a dead letter and an empty ritual, which can, at the mere whim and caprice of the authority, be given a complete go bye. While it is true that the petitioner does not belong to the reserved category and, even if his contentions were to be accepted, would not be entitled for appointment, I see no reason to shut an enquiry in this regard merely on the ground of locus standi. Once it is brought to its notice that the rule of reservation is violated, whoever be the informant, it is the obligation, nay the duty, of this Court to examine these aspects. The fact that not a single lecturer, in the Department of Chemistry in the respondent-University, belongs to the reserved category and that the University has, through this method of grouping of departments denied candidates, belonging to the reserved category, the benefit of appointment as lecturers, in the Department of Chemistry of the respondent-University, is a serious cause for concern. The plight of the most backward of the backward classes must always be borne in mind by statutory

authorities, and instrumentalities of the State, on whom lies the responsibility of ensuring compliance with the rule of reservation, both in letter and in spirit.

Failure of the respondent-University to comply with the rule of reservation, and in not ear-marking posts subject-wise or department-wise, would have necessitated judicial intervention but for the fact that the Full Bench of this Court in **P.V.S.V.PRASADA RAO**[1] had, in a similar case, while declaring as illegal the action of the University in not providing reservation subject-wise or department-wise and in grouping posts in different departments together for the purpose of providing reservation, declined to interfere with the selections already made. It is useful in this context to refer to the observations of Sri V.V.S.Rao J. The Learned Judge held that, while in all cases relief to the aggrieved could not be denied in the writ petition merely on the ground of latches, if the delay and latches had the effect of seriously effecting the fundamental rights of a third party, the relief could be refused for valid reasons and that grant of the relief could be denied on account of the long delay if it was likely to result in throwing public administration out of gear. To quote:

"……The question of delay and laches raised in these writ petitions may now be considered with reference to the principles and authorities referred to hereinabove. The impugned notification was issued on 17.10.1992. The selections to various departments/faculties in three different groups went on for a period of more than one year. During this period of selection, the notification was not challenged presumably because some of the petitioners were also expecting to be successful in getting the posts. After the

selections are over, the recommendations were placed before the Board of Management which by a resolution dated 11.03.1994 approved the recommendations. Immediately thereafter, all the respondents 5 to 208 were appointed as Lecturers/Readers and they have been working since then. After the appointments are made, W.P.No.8835 of 1994 is filed on 28.04.1994 and W.P.No.4885 of 1995 was filed on 12.03.1995. The writ petitions were kept pending and they were ultimately dismissed by Full Bench of this Court on 06.10.1999. By that time 4 to 5 years lapsed. Aggrieved by the judgment of the Full Bench, some of the petitioners filed Special Leave Petitions. The Supreme Court granted leave and disposed of the Special Leave Petition No.8106 of 2003 by order dated 26.09.2003. By that time, almost a decade lapsed and all the selected candidates continued in their posts gaining experience from year to year. After remand, these matters were argued before this Bench in December, 2004. Thus, from the date of issue of impugned notification, by now almost for over a decade, respondents 5 to 208 have been continuing in the posts of Lecturers/Readers. It is also brought to our notice that these respondents who were bachelors/spinsters at the time of appointment, later got married, established families and settled in life. In all probability, all of them have crossed forty years. If at this stage their appointments are set aside, the effect on their life and the effect on the University administration would not be short of catastrophe. As noticed by the Supreme Court in **H.C.Puttaswamy v. Chief Justice of Karnataka High Court** (supra), even if the respondents 5 to 208 are again given an opportunity to compete with the freshers, they would not stand chance of competing with them. ……"

"……There is yet another reason, which is related to the delay and laches. The method adopted by the University is not void *ab initio* nor it is abuse of law. Given the statistics that percentage of reservation has been well maintained in each group and that wherever the candidates are not available the vacancies are carried forward duly shifting the post from one department to another needy department, it is a fit case where the court should not nullify the appointments which are more than a decade old. In the course of the judgment, we have also referred to the test to be applied while scrutinizing the principles of affirmative action adopted by the State. This Court cannot ignore the fact that even those who intended to compete may not be interested now to accept the posts. If they are appointed now they may not even reach the level of Readers. ……"

While concurring with the conclusions of Sri V.V.S.Rao J., both Sri J. Chelameswar and Sri Goda Raghuram JJ., observed:

"……We have had the benefit of perusing the painstaking and meticulously crafted judgment of our learned brother Hon'ble Mr. Justice V.V.S. Rao. We agree with the OPERATIVE conclusion that the appointments of over

200 candidates (party respondents) ought not to be invalidated as these persons having been appointed as Lecturers/Readers have continued as such for over a decade, have settled down, got married, begot children and are now of an age disabling them from securing alternative employment. Some of these persons had already resigned, some have retired, some have died and the dependents of those who have died are also being given pension. If at this stage their initial appointments are declared invalid the social costs in terms of human misery and individual privations would be incalculable. Besides, for the resultant vacancies the petitioners may either be not interested in applying at this distant point of time, may not be able to compete or may not derive an advantage in terms of career opportunities commensurate with the misery and hardship that would be caused by the invalidation of appointments already made. For the reasons recorded by our learned brother Justice Rao, we therefore concur with the conclusion that it is not a fit case for grant of relief to the petitioners. ……"

The selection process, which is the subject matter of challenge in this writ petition, is of the year 1992. More than 14 years have elapsed since then. In the interregnum, respondents 2 to 6 have been promoted as Readers and then as Professors. The petitioner also belongs to the open category and, even if the selection process were to be set aside on the ground that the rule of reservation has not been complied with, he would not be entitled to have his case considering for appointment as a lecturer under the reserved category. No candidate from the reserved category is before this Court. It cannot be said with certainty as to whether any of those candidates, who belong to the reserved category and had participated in the selection process, would still be interested in being appointed as lecturers in Chemistry in the respondent-University. It would, therefore, not be appropriate for this Court, at this length of time, to interfere with the process of selection.

The writ petition fails and is accordingly, dismissed.

However, in the circumstances, without costs.

25.09.2006

Asp/Cvrk

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[1] (2006(2) ALD 1 (DB)